be continuous and I therefore set aside the order of the magistrate and remit the case to the magistrate for him to call on the defence.

Order accordingly.

PUBLIC PROSECUTOR v. LIM SWEE GUAN

[A.Cr.J. (Ong Hock Sim J.) August 16, 1968]
[Penang — Criminal Revision No. 5 of 1968]

Penal Code, s. 408 — Criminal breach of trust — Charge bad in law — Order of retrial — Criminal Procedure Code (Cap. 21), s. 163(2).

The accused was charged with criminal breach of trust an offence under section 408 of the Penal Code and convicted on his plea and sentenced to one year's imprisonment. It was later realised that the charge contravened section 163(2) of the Criminal Procedure Code because the time included between the first and last dates mentioned in the charge exceeded one year and therefore was bad in law. On revision,

Held: the accused should be retried before the same or another magistrate. This was not a proper case to follow *Cheah Yew Fatt* v. *Public Prosecutor* (1) and merely quash the conviction and leave it to the Public Prosecutor to act thereafter in his discretion having regard to sections 322 and 310 of the Criminal Procedure Code.

Cases referred to:—

(1) *Cheah Yew Fatt* v. *Public Prosecutor* [1960] M.L.J. xlvi.

(2) *Ahmad Shah bin Yasin* v. *Public Prosecutor* [1952] M.L.J. 28.

(3) *R.* v. *Tan Chu Chooi* [1938] M.L.J. 230.

CRIMINAL REVISION.

Abdul Razak bin Dato' Abu Samah (Deputy Public Prosecutor) for the appellant.

Respondent in person.

Ong Hock Sim J.: This matter has come to me to be dealt with by way of revision. In this case, the accused had pleaded guilty to the following charge:—

"That you, between 9th March, 1965 and 20th November, 1967, at the United Malayan Banking Corporation Limited, Beach Street, Penang, in the District of Georgetown, in the State of Penang, being a servant in the employment of the said United Malayan Banking Corporation Limited, and in such manner entrusted with certain property, to wit, $165,000 cash, committed criminal breach of trust in respect of that property and thereby committed an offence punishable under section 408 of the Penal Code."

He was convicted on his own plea and sentenced to one year's imprisonment.

I need only refer to section 163(2) of the Criminal Procedure Code (S.S. Cap. 21) which reads:—

"When the accused is charged with criminal breach of trust or dishonest misappropriation of money, it shall be sufficient to specify the gross sum in respect of which the offence is alleged to have been committed and the dates between which the offence is alleged to have been committed without specifying particular items or exact dates and the charge so framed shall be deemed to be a charge of one offence within the meaning of section 174; provided that the time included between the first and last of such dates shall not exceed one year."

It is clear that in the present instance, the charge is wrong and directly contravened an express statutory provision. This vitiated the trial which in effect is a nullity. In exercise of its revisionary powers under section 322 Criminal Procedure Code the court may exercise the powers under section 310 and, as in an appeal from a conviction, reverse the finding and sentence and acquit or discharge the accused or order him to be retried by a court of competent jurisdiction or committed for trial. I do not think it proper for me in this case to follow *Cheah Yew Fatt* v. *Public Prosecutor* (1) and merely quash the conviction and leave it to the public prosecutor to act thereafter in his discretion having regard to sections 322 and 310. I accordingly direct that the accused be retried before the same or another president.

I would like to quote the observations of Mr. Justice Taylor in *Ahmad Shah bin Yassin* v *Public Prosecutor* (2) at page 29.

"While it is clearly the duty of those in charge of prosecutions to guard against misjoinder and other errors in charges, it is also the duty of presidents and magistrates to examine all charges critically before calling upon accused to plead and to rectify errors at the earliest opportunity."

The time to do this is at the same time when the accusation was made. *R.* v. *Tan Chu Chooi.* (3)

Noting the dates specified in the charge, it is clear that compliance with section 169(2) would necessitate the framing of three separate charges. In our Code, the joinder of the offences of the same kind to be tried at one trial is limited to three, committed within the space of twelve months while Singapore provides for any number of such offences to be tried together.

The conviction is set aside and retrial ordered.

Re-trial ordered.

SAINT ANDREW'S MISSION HOSPITAL v WAH HIN & CO. LTD. & ORS.

[A.C.J. (Kulasekaram J.) August 23, 1968]
[Singapore — District Court Appeal No. 1 of 1968]

Landlord and Tenant — Rent controlled premises — Statutory tenant — Notice to chief tenant — Existence of sub-tenants — Position of sub-tenants on termination of chief tenant's tenancy — Whether further notice required before proceedings can be commenced against sub-tenants — Control of Rent Ordinance (Cap. 242) ss. 17, 26, 27 & 28.

The appellant/plaintiff, landlord of a rent-controlled premises, let the premises to a tenant who in turn sublet a portion of it to a sub-tenant. The respondents